

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-301
)	
Charles A. Farmer)	File No. BPH-920518MA
)	
Richard M. Schafbuch)	File No. BPH-920521MI
)	
For Construction Permit for a)	
New FM Station on Channel 280C3)	
in Ilwaco, WA)	

To: Honorable Joseph Chachkin
Administrative Law Judge

**MOTION TO STRIKE "RESPONSE TO SCHAFBUCH OPPOSITION TO PETITION
FOR LEAVE TO AMEND THE APPLICATION OF CHARLES A. FARMER"**

Richard M. Schafbuch, by his attorney, hereby moves that a "Response to Schafbuch Opposition to Petition for Leave to Amend the Application of Charles A. Farmer" filed on behalf of Elizabeth Farmer, personal representative of Charles A. Farmer on August 6, 1997 (the "Response") be stricken as an unauthorized and unjustified pleading.

In support whereof, the following is respectfully shown:

1. On July 21, 1997, Mr. Farmer's counsel filed a Petition for Leave to Amend to substitute his widow as the applicant in BPH-920518MA. In lieu of an attempt to show good cause, the petition merely invoked Section 1.65 of the Commission's rules.
2. On July 29, 1997, Mr. Schafbuch filed an Opposition stating that the amendment was inexcusably late, as Mr. Farmer had in fact passed away over eight months earlier.

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3. Mr. Schafbuch's Opposition was properly filed pursuant to Section 1.294 of the Commission's rules, which governs the filing of pleadings in Commission hearing procedures. Section 1.294(b) expressly states that replies to oppositions to interlocutory requests will not be entertained (except in three categories defined by Section 1.294(c) of the rules, which are inapplicable here). Perhaps recognizing this, the subject pleading is called a "Response." Regardless of its label, it is clearly intended as a reply, is not permitted, and therefore must be stricken.

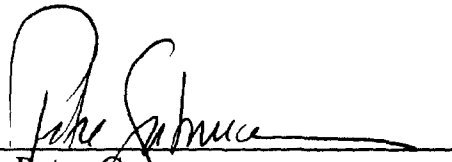
4. Even were the response to be viewed on its putative merits, it only serves to prove the argument raised in Mr. Schafbuch's Opposition. It characterizes the Opposition as "preposterous" and "insensitive;" these are matters of judgment and opinion. Notably, though, it does not dispute the accuracy of the opposition; these are matters of fact. Indeed, the Response discloses, at ¶ 4, that Mr. Farmer's counsel was aware of his death since late March 1997. Even were counsel's knowledge to be somehow relevant to the question of timely reporting, the Response still leaves unexplained the question of why the Commission was uninformed of Mr. Farmer's death in the four months which transpired between counsel's knowledge and the filing of the Petition for Leave to Amend. In any event, the entirety of the subject Response consists of hearsay.

5. It is clear from the cases cited at ¶ 4 of Mr. Schafbuch's July 29 Opposition that the Commission applies its procedural mandates strictly once a case is designated for hearing, and that the dormancy of a proceeding cannot be successfully invoked as an excuse. Accordingly, the subject response should be stricken, both because it is unauthorized and because its putative merits only serve to substantiate the unexcused untimeliness which

formed the basis for Mr. Schafbuch's Opposition to Mr. Farmer's Petition for Leave to Amend in the first place.

Respectfully submitted,

RICHARD M. SCHAFBUCH

By: 
Peter Gutmann
His Attorney

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August 11, 1997

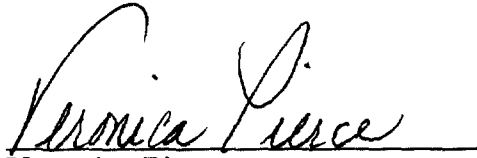
CERTIFICATE OF SERVICE

I, Veronica A. Pierce, a secretary with the law firm of Pepper & Corazzini, do hereby certify that a true and correct copy of the foregoing Motion to Strike "Response to Schafbuch Opposition to Petition for Leave to Amend the Application of Charles A. Farmer" was served by U.S. mail, first-class, postage prepaid on the 11th day of August, 1997, on the following individuals:

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(Counsel for Elizabeth Farmer, Personal Representative
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Veronica Pierce

* Hand Delivery